

EDMUND G. BROWN JR., Attorney General
of the State of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General
ELENA L. ALMANZO, State Bar No. 131058
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 322-6121
Facsimile: (916) 324-5567

Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2008-106

DAVID WAYNE WELLER
1673 Columbus Road
West Sacramento, California 95691

A C C U S A T I O N

Registered Nurse License No. 496144
Public Health Nurse Certificate No. 52391
Nurse Practitioner Certificate No. 13720

Respondent.

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

Registered Nurse License No. 496144

2. On or about August 31, 1993, the Board issued Registered Nurse License Number 496144 to David Wayne Weller ("Respondent"). Respondent's registered nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2009, unless renewed.

1 **Public Health Nurse Certificate No. 52391**

2 3. On or about August 31, 1994, the Board issued Public Heath Nurse
3 Certificate Number 52391 to Respondent. Respondent's public health nurse certificate was in
4 full force and effect at all times relevant to the charges brought herein and will expire on June 30,
5 2009, unless renewed.

6 **Nurse Practitioner Certificate No. 13720**

7 4. On or about September 11, 2002, the Board issued Nurse Practitioner
8 Certificate Number 13720 to Respondent. Respondent's nurse practitioner certificate was in full
9 force and effect at all times relevant to the charges brought herein and will expire on June 30,
10 2009, unless renewed.

11 **STATUTORY PROVISIONS**

12 5. Business and Professions Code ("Code") section 2750 provides, in
13 pertinent part, that the Board may discipline any licensee, including a licensee holding a
14 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
15 2750) of the Nursing Practice Act.

16 6. Code section 2761 states, in pertinent part:

17 The board may take disciplinary action against a certified or licensed
18 nurse or deny an application for a certificate or license for any of the following:

19 (a) Unprofessional conduct . . .

20

21 (f) Conviction of a felony or of any offense substantially related
22 to the qualifications, functions, and duties of a registered nurse, in which event
the record of the conviction shall be conclusive evidence thereof . . .

23 7. Code section 2762 states, in pertinent part:

24 In addition to other acts constituting unprofessional conduct within
25 the meaning of this chapter [the Nursing Practice Act], it is unprofessional
conduct for a person licensed under this chapter to do any of the following:

26 (a) Obtain or possess in violation of law, or prescribe, or except
27 as directed by a licensed physician and surgeon, dentist, or podiatrist
administer to himself or herself, or furnish or administer to another, any

28 ///

1 controlled substance as defined in Division 10 (commencing with Section
2 11000) of the Health and Safety Code or any dangerous drug or dangerous
device as defined in Section 4022.

3 (b) Use any controlled substance as defined in Division 10
4 (commencing with Section 11000) of the Health and Safety Code, or any
5 dangerous drug or dangerous device as defined in Section 4022, or alcoholic
6 beverages, to an extent or in a manner dangerous or injurious to himself or
herself, any other person, or the public or to the extent that such use impairs
his or her ability to conduct with safety to the public the practice authorized
by his or her license.

7 (c) Be convicted of a criminal offense involving the prescription,
8 consumption, or self-administration of any of the substances described in
9 subdivisions (a) and (b) of this section, or the possession of, or falsification of
a record pertaining to, the substances described in subdivision (a) of this section,
in which event the record of the conviction is conclusive evidence thereof . . .

10 8. Section 2765 of the Code states:

11 A plea or verdict of guilty or a conviction following a plea of nolo
12 contendere made to a charge substantially related to the qualifications, functions
13 and duties of a registered nurse is deemed to be a conviction within the meaning
14 of this article. The board may order the license or certificate suspended or revoked,
15 or may decline to issue a license or certificate, when the time for appeal has elapsed,
16 or the judgment of conviction has been affirmed on appeal or when an order
granting probation is made suspending the imposition of sentence, irrespective of
a subsequent order under the provisions of Section 1203.4 of the Penal Code
allowing such person to withdraw his or her plea of guilty and to enter a plea of
not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
information or indictment.

17 9. Code section 4060 states:

18 No person shall possess any controlled substance, except that furnished to
19 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
21 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
22 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
23 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
24 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
(iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
This section shall not apply to the possession of any controlled substance by a
manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
practitioner, or physician assistant, when in stock in containers correctly
labeled with the name and address of the supplier or producer.

25 Nothing in this section authorizes a certified nurse-midwife, a nurse
26 practitioner, a physician assistant, or a naturopathic doctor, to order his or
her own stock of dangerous drugs and devices.

27 ///

28 ///

1 10. Health and Safety Code section 11173, subdivision (a), states, in pertinent
2 part:

3 No person shall obtain or attempt to obtain controlled substances, or
4 procure or attempt to procure the administration of or prescription for controlled
substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

5 **Cost Recovery**

6 11. Code section 125.3 provides, in pertinent part, that the Board may request
7 the administrative law judge to direct a licensee found to have committed a violation or
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
9 and enforcement of the case.

10 **CONTROLLED SUBSTANCE AT ISSUE**

11 12. “Demerol” , a brand of meperidine hydrochloride, is a Schedule II
12 controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(17).

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Criminal Convictions)**

15 13. Respondent is subject to disciplinary action pursuant to Code section
16 2761, subdivision (f), in that Respondent has been convicted of crimes which are substantially
17 related to the qualifications, duties, and functions of a licensed registered nurse, as follows:

18 a. On or about October 20, 2004, in the criminal proceeding titled *People v.*
19 *David Wayne Weller* (Super. Ct. Sacramento County, 2004, Case No. 04M00171), Respondent
20 was convicted by the court on his plea of nolo contendere to a violation of Penal Code section
21 647, subdivision (d) (loitering in and about a public toilet, a misdemeanor). Respondent was also
22 charged with a violation of Penal Code section 647, subdivision (a) (lewd conduct); however,
23 that charge was dismissed in view of Respondent’s plea as set forth above. The incident upon
24 which Respondent’s conviction is based occurred on or about December 16, 2003.

25 b. On or about November 17, 2004, in the criminal proceeding titled *People*
26 *v. David Wayne Weller* (Super. Ct. Yolo County, 2004, Case No. 040005137), Respondent was
27 convicted by the court on his plea of no contest to a violation of Vehicle Code section 23152,
28 subdivision (b) (driving under the influence of alcohol, a misdemeanor). The circumstances of

1 the crime are that on or about July 19, 2004, Respondent willfully and unlawfully drove a vehicle
2 while having 0.08 percent or more, by weight, of alcohol in his blood. Respondent's blood
3 alcohol level was determined to be approximately 0.14 percent.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Diversion, Possession, and Self-Administration of Controlled Substances)**

6 14. Respondent is subject to disciplinary action pursuant to Code section
7 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
8 2762, subdivision (a), in that while on duty as a registered nurse and/or nurse practitioner in the
9 Emergency Department at San Joaquin General Hospital, French Camp, California (hereinafter
10 "SJGH"), Respondent did the following:

11 **Diversion of Controlled Substances:**

12 a. Respondent obtained the controlled substance Demerol by fraud, deceit,
13 misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173,
14 subdivision (a). Respondent, by his own admission, began diverting injectable Demerol from
15 SJGH for his own personal use approximately three weeks after commencing employment at
16 SJGH. Respondent removed unknown quantities of Demerol from SJGH's Pyxis system (a
17 computerized medication system), using two methods of diversion: Respondent would access
18 the Pyxis using his own identification (personal access code) and remove Demerol when there
19 was no physician's order for the medication, or would remove the Demerol after another user had
20 logged onto the Pyxis and left the Pyxis area (according to Respondent, the Pyxis did not
21 automatically log-off immediately following the last user's access, allowing Respondent to
22 remove Demerol under the name of the previous user). Respondent took the medication home
23 and used it as a "sleeping aid" to combat chronic insomnia (Respondent injected the Demerol
24 into his hands, arms, and legs).

25 **Possession of Controlled Substances:**

26 b. Respondent possessed unknown quantities of the controlled substance
27 Demerol, as set forth in subparagraph (a) above, without a valid prescription from a physician,

28 ///

dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060.

Self-Administration of Controlled Substances:

c. Respondent self-administered the controlled substance Demerol, as set forth in subparagraph (a) above, without lawful authority therefor.

THIRD CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverages to an Extent or in a Manner

Dangerous or Injurious to Oneself and the Public)

15. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (b), in that on or about July 19, 2004, Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to himself and the public, as set forth in subparagraph 13(b) above.

FOURTH CAUSE FOR DISCIPLINE

(Conviction Related to the Consumption of Alcoholic Beverages)

16. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (c). On or about November 17, 2004, Respondent was convicted of a criminal offense involving the consumption of alcoholic beverages, as set forth in subparagraph 13(b) above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 496144, issued to David Wayne Weller;

2. Revoking or suspending Public Health Nurse Certificate Number 52391, issued to David Wayne Weller;

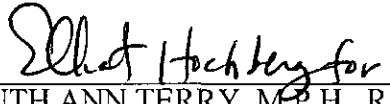
///

1 3. Revoking or suspending Nurse Practitioner Certificate Number 13720,
2 issued to David Wayne Weller;

3 4. Ordering David Wayne Weller to pay the Board of Registered Nursing the
4 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
5 Professions Code section 125.3;

6 5. Taking such other and further action as deemed necessary and proper.

7
8 DATED: 9/25/07.

9
10 
11 RUTH ANN TERRY, M.P.H., R.N.
12 Executive Officer
13 Board of Registered Nursing
14 Department of Consumer Affairs
15 State of California

16
17
18
19
20
21
22
23
24
25
26
27
28 Complainant